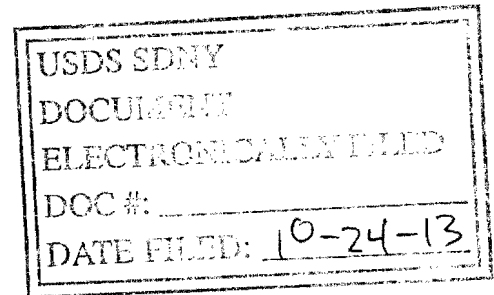


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



ENZO BIOCHEM, INC., *et al.*,

Plaintiffs,

-v-

PERKINELMER, INC., *et al.*,

Defendants.

No. 03 Civ. 3817 (RJS)
ORDER

ROCHE DIAGNOSTICS GMBH,

Plaintiff,

-v-

ENZO BIOCHEM, INC., *et al.*,

Defendants.

No. 04 Civ. 4046 (RJS)
ORDER


RICHARD J. SULLIVAN, District Judge:

The Court is in receipt of the attached pre-motion letters from Roche, Perkin Elmer, and Enzo. Roche and PerkinElmer wish to supplement the record in their summary judgment motions now pending before the Court. Although this supplemental evidence certainly would be relevant to triable issues and likely would be admissible at trial, the Court does not see why these late-breaking facts adduced during discovery in a *different* case should be admitted to the summary judgment record more than half a year after the end of discovery in this case, particularly when the evidence does not appear to conclusively resolve any dispute as to a

material fact. Accordingly, the Court deems Roche and PerkinElmer's contemplated motion to supplement the record to have been made, and it is HEREBY DENIED.

SO ORDERED.

DATED: October 23, 2013
 New York, New York



RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE

WILMERHALE

October 7, 2013

By Email

Honorable Richard J. Sullivan
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007-1312

Re: *Roche Diagnostics GmbH et al. v. Enzo Biochem, Inc. et al.*, No. 04 Civ. 4046 (RJS)
Enzo Biochem, Inc. et al. v. PerkinElmer, Inc. et al., No. 03 Civ. 3817 (RJS)

Dear Judge Sullivan:

This letter is submitted on behalf of Roche and PerkinElmer in connection with their pending motions for summary judgment of the non-patent claims in the above-referenced matters, *see* Dkt. No. 102 (04 Civ. 4046), Dkt. No. 100 (03 Civ. 3817). Pursuant to Paragraph 2(A) of the Court's Individual Practices, Roche and PE respectfully request a pre-motion conference regarding their proposed motion to supplement the summary judgment record to include (i) excerpts from the transcript of the recent deposition of Barry Weiner (Ex. A); and (ii) Enzo's 1996 product catalog, which was the subject of Mr. Weiner's testimony (Ex. B).¹

On October 2, 2013, Roche took the 30(b)(6) deposition of Barry Weiner, who has served as the President of Enzo since 1996.² Mr. Weiner was Enzo's corporate designee on, *inter alia*, the topic of "Enzo's current and historical business, operations, and structure," including "any actual or potential customers" of Enzo. *See* Roche's Notice of 30(b)(6) Deposition to Enzo, Schedule A at 8 (Topic 10). Mr. Weiner testified generally about Enzo's product portfolio in 1996, which is when Roche first launched the Elecsys® products accused of infringing U.S. Patent No. 4,943,523. In that context, Mr. Weiner discussed the various types of customers that purchased Enzo's catalog products, which were subject to a "research use only" restriction that is materially identical to that required by PerkinElmer's Distributorship Agreement, and also similar to the language of the label that Roche placed on products sold pursuant to its Distributor Agreement. *Compare* Ex. B, Enzo Diagnostics Price Index 1996 at E00029406; Ex. 3 at ¶ 1(g), Elliot Decl. Dkt. No. 105 (03 Civ. 3817); Exs. 37 and 43, Supp. Gunther Decl. Dkt. No. 112 (04 Civ. 4046). During his deposition, Mr. Weiner testified that the "research use only" restriction in Enzo's catalog was only meant to indicate that the products were not FDA-approved diagnostic products, and that the products could be purchased for any research use, including by

¹ Roche also filed a Notice of Supplemental Authority on August 21, 2013, Dkt. No. 116 (04 Civ. 4046), to which Enzo responded on August 28, 2013, Dkt. No. 118 (04 Civ. 4046).

² In parallel with the Court's consideration of the pending summary judgment motions, Roche and Enzo have been conducting discovery in connection with their claims and defenses relating to U.S. Patent Nos. 4,943,523 and 5,082,830. *See* Dkt. No. 99 (04 Civ. 4046).

pharmaceutical and biotechnology companies for research in connection with product development. *See* Ex. A at 28:10-25, 38:9-39:13, 65:18-67:6, 68:3-68:21, 70:5-22, 72:14-22, 73:10-74:19, 76:12-77:24.

Mr. Weiner's testimony is undisputed evidence of how Enzo itself applies the "research use only" restrictions at issue in this case. That testimony confirms and is consistent with the meaning of the "research use only" provisions advanced by Roche and PerkinElmer, and directly contradicts the interpretation advanced by Enzo. *See* Enzo's Br. at 6-7, Dkt. 107 (04 Civ. 4046); Enzo's Br. at 13-14, Dkt. No. 104 (03 Civ. 3817); *see also* Sept. 27, 2013 Hearing Tr. 23:15-25:9. Mr. Weiner's deposition testimony could not, of course, be previously submitted because it was not taken until last week. Furthermore, Enzo's arguments in opposition to PerkinElmer's and Roche's motions—including the argument that their respective contracts prohibited sales to any commercial entity *per se*—were not made in the complaint, in answers to contention interrogatories, or in summary judgment briefing before Judge Sprizzo. *See, e.g.*, Sept. 27, 2013 Hearing Tr. 5:13-6:7. Accordingly, good cause exists for supplementing the summary judgment record on those issues.

Accordingly, Roche and PerkinElmer respectfully seek leave to file a brief motion supplementing the record with the deposition testimony of Mr. Weiner and the language of the "research use only" restriction in the 1996 Enzo catalog that was the subject of his testimony. In the alternative, Roche and PerkinElmer respectfully request that the Court accept this letter for filing and deem the summary judgment record supplemented.

Respectfully,

By: /s/ Robert J. Gunther, Jr.

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WILMERHALE LLP
250 Greenwich Street
New York, NY 10007
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*Attorney for Roche Diagnostics GmbH and
Roche Molecular Systems, Inc.*

By: /s/ William G. McElwain

William G. McElwain
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Washington, DC 20006
T: 202-663-6388
william.mcelwain@wilmerhale.com

*Attorney for PerkinElmer, Inc. and
PerkinElmer Life Sciences, Inc.*

cc: Counsel of Record

Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ROCHE DIAGNOSTICS GmbH, a German
corporation; and ROCHE MOLECULAR
SYSTEMS, INC., a California
corporation,

Plaintiffs,

-against- 04 CIV. 4046 (RJS)

ENZO BIOCHEM, INC., a New York
corporation; and ENZO LIFE
SCIENCES, INC., a New York
corporation, formerly known as
ENZO DIAGNOSTICS, INC.,

Defendants.

-----X

HIGHLY CONFIDENTIAL

ATTORNEYS' EYES ONLY

PURSUANT TO PROTECTIVE ORDER

VIDEOTAPED DEPOSITION OF BARRY W. WEINER

New York, New York

Wednesday, October 2, 2013

9:47 a.m.

Reported by:
LYNN VAN DEN HENDE
JOB NO: 31800

BARRY W. WEINER - HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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|----|--|----|--|
| | 2 | | 4 |
| 1 | | 1 | HIGHLY CONFIDENTIAL - B. Weiner |
| 2 | | 2 | VIDEO OPERATOR: This begins the video |
| 3 | | 3 | deposition of Barry Weiner, in the matter of |
| 4 | | 4 | Roche Diagnostics GmbH, et al., versus Enzo |
| 5 | October 2, 2013 | 5 | Biochem, Inc., et al. This deposition is |
| 6 | 9:47 a.m. | 6 | being held at 200 Park Avenue, New York, New |
| 7 | | 7 | York, on October 2, 2013, at approximately |
| 8 | Videotaped deposition of BARRY W. | 8 | 9:47 a.m. |
| 9 | WEINER, held at the offices of Greenberg | 9 | My name is Manuel Abreu from the firm |
| 10 | Traurig, LLP, 200 Park Avenue, New York, New | 10 | of David Feldman Worldwide, and I'm the |
| 11 | York, pursuant to Notice, before Lynn Van | 11 | legal video specialist. The court reporter |
| 12 | Den Hende, a Registered Professional | 12 | is Lynn Van Den Hende, in association with |
| 13 | Reporter, State of New York Certified | 13 | David Feldman Worldwide. |
| 14 | Shorthand Reporter, State of Illinois | 14 | Will counsel please introduce |
| 15 | Certified Shorthand Reporter, Registered | 15 | themselves. |
| 16 | Merit Reporter, Certified Realtime Reporter, | 16 | MR. KHAN: So this is Omar Khan and |
| 17 | Certified LiveNote Reporter, and Notary | 17 | Anjali Mohan of Wilmer Hale LLP for Roche. |
| 18 | Public within and for the State of New York. | 18 | MR. ELLIOTT: John Elliott and Richard |
| 19 | | 19 | Pettus of Greenberg Traurig for Enzo. |
| 20 | | 20 | VIDEO OPERATOR: Will the court |
| 21 | | 21 | reporter please swear in the witness. |
| 22 | | 22 | B A R R Y W. W E I N E R, |
| 23 | | 23 | called as a witness, having been duly |
| 24 | | 24 | sworn by a Notary Public, was examined |
| 25 | | 25 | and testified as follows: |
| | 3 | | 5 |
| 1 | | 1 | HIGHLY CONFIDENTIAL - B. Weiner |
| 2 | APPEARANCES | 2 | EXAMINATION |
| 3 | ON BEHALF OF PLAINTIFFS: | 3 | BY MR. KHAN: |
| 4 | WILMER CUTLER PICKERING HALE AND DORR, LLP | 4 | Q. All right, Mr. Weiner, we've already |
| 5 | 7 World Trade Center | 5 | met, but could you please state your name for the |
| 6 | 250 Greenwich Street | 6 | record? |
| 7 | New York, New York, 10007 | 7 | A. Barry Weiner. |
| 8 | 212-937-7252 | 8 | Q. And also your residential address for |
| 9 | BY: OMAR A. KHAN, ESQ. | 9 | the record. |
| 10 | omar.khan@wilmerhale.com | 10 | A. 69 Fifth Avenue, New York, New York. |
| 11 | ANJALI MOHAN, ESQ. | 11 | Q. Sure. My understanding, Mr. Weiner, |
| 12 | anjali.mohan@wilmerhale.com | 12 | is that you are the president of Enzo Biochem, |
| 13 | | 13 | Inc., is that correct? |
| 14 | ON BEHALF OF DEFENDANTS: | 14 | A. Yes. |
| 15 | GREENBERG TRAURIG, LLP | 15 | Q. And what I'd like to do, before we |
| 16 | MetLife Building | 16 | sort of get going, is just talk a little bit |
| 17 | 200 Park Avenue | 17 | about your educational background and your |
| 18 | New York, New York, 10166 | 18 | experience. |
| 19 | 212-801-2234 | 19 | So could you please let us know what |
| 20 | BY: JOHN J. ELLIOTT, ESQ. | 20 | your educational background is? |
| 21 | elliottj@gtlaw.com | 21 | A. I have an undergraduate degree in |
| 22 | RICHARD C. PETTUS, ESQ. | 22 | economics from NYU and a master's in business |
| 23 | pettusrc@gtlaw.com | 23 | administration from Boston University. |
| 24 | ALSO PRESENT: | 24 | Q. At Boston University, when you were |
| 25 | MANUEL ABREU, VIDEOGRAPHER | 25 | receiving your MBA, did you specialize in |

2 (Pages 2 to 5)

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 2803, New York, NY 10123 (212)705-8585

BARRY W. WEINER - HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

| | |
|---|---|
| <p>26</p> <p>1 HIGHLY CONFIDENTIAL - B. Weiner</p> <p>2 MR. ELLIOTT: I'm going to jump in</p> <p>3 here too.</p> <p>4 All of this is, just for the record,</p> <p>5 publicly available. You know, it's all been</p> <p>6 given to the SEC, and it's all available on</p> <p>7 their website.</p> <p>8 And the documents -- and we have</p> <p>9 produced a great volume of those documents</p> <p>10 as well.</p> <p>11 BY MR. KHAN:</p> <p>12 Q. Other than those three subsidiaries</p> <p>13 that we just talked about, any other subsidiaries</p> <p>14 that you can think of under Enzo Biochem, Inc.?</p> <p>15 A. Ultimately Enzo Diagnostics became</p> <p>16 Enzo Life Sciences. So it's same subsidiary,</p> <p>17 different evolutionary name.</p> <p>18 I'm not aware of any other</p> <p>19 subsidiaries.</p> <p>20 Q. What was the reason for the name</p> <p>21 change from Enzo Diagnostics to Enzo Life</p> <p>22 Sciences?</p> <p>23 A. It was more descriptive of the</p> <p>24 business, in terms of the evolutionary extension</p> <p>25 of this business into other areas of product</p> | <p>28</p> <p>1 HIGHLY CONFIDENTIAL - B. Weiner</p> <p>2 principle revenue streams for Enzo Diagnostics?</p> <p>3 A. Enzo historically has had a strong</p> <p>4 franchise in the gene labeling, DNA/RNA labeling</p> <p>5 technologies.</p> <p>6 One of our key contributions has been</p> <p>7 our nonradioactive DNA detection systems, which</p> <p>8 were certainly one of the core products of the</p> <p>9 corporation.</p> <p>10 Q. Any other key product lines that you</p> <p>11 can think of in the 1996 time frame?</p> <p>12 MR. ELLIOTT: Objection.</p> <p>13 A. We had a full catalog, which one could</p> <p>14 access, which would delineate all of our</p> <p>15 products.</p> <p>16 Unfortunately I'm -- we had many</p> <p>17 products. We sold hundreds of products. And</p> <p>18 there were enzymes that are utilized in</p> <p>19 restriction analysis. There were systems and</p> <p>20 kits for a variety of different aspects of doing</p> <p>21 biomedical research and diagnosis and</p> <p>22 exploration.</p> <p>23 I certainly, you know, would need to</p> <p>24 be refreshed and take a look at the catalog in</p> <p>25 1996 to see what those products could be.</p> |
| <p>27</p> <p>1 HIGHLY CONFIDENTIAL - B. Weiner</p> <p>2 development and product sales.</p> <p>3 Q. Okay. So what was the business of</p> <p>4 Enzo Diagnostics and/or Enzo Life Sciences?</p> <p>5 A. It took many different evolutions as</p> <p>6 we increased our product mix.</p> <p>7 We worked on tools for DNA/RNA</p> <p>8 labeling. We worked on enzyme development. We</p> <p>9 worked on immunoassay development.</p> <p>10 We worked on a variety of novel</p> <p>11 platforms that today have become the foundation</p> <p>12 of some very major product lines that are being</p> <p>13 distributed around the world.</p> <p>14 So Life Sciences was more descriptive</p> <p>15 of the breadth of the operation than just</p> <p>16 diagnostics.</p> <p>17 And as a result, we determined to --</p> <p>18 to give the market a better, clearer</p> <p>19 understanding of what our strategy and market mix</p> <p>20 would be.</p> <p>21 Q. What were the principle revenue</p> <p>22 streams -- and I know you've talked about how</p> <p>23 this changed over time, but if I can focus on</p> <p>24 1996, in that time frame.</p> <p>25 In or around 1996 what were the</p> | <p>29</p> <p>1 HIGHLY CONFIDENTIAL - B. Weiner</p> <p>2 MR. ELLIOTT: I'm going to state for</p> <p>3 the record here too that the principal</p> <p>4 product lines and revenue streams are not</p> <p>5 noticed as 30(b)(6) topics.</p> <p>6 And to the extent we're going to get</p> <p>7 into that, that's -- that's fine, but it's</p> <p>8 in his personal capacity.</p> <p>9 MR. KHAN: Obviously we disagree,</p> <p>10 because the notice topics cover such</p> <p>11 inquiry, but we can take that up later.</p> <p>12 BY MR. KHAN:</p> <p>13 Q. So you mentioned, Mr. Weiner, that in</p> <p>14 or around 1996 Enzo Diagnostics had a catalog, is</p> <p>15 that right?</p> <p>16 A. We've always had a catalog, yes.</p> <p>17 Q. And would that catalog in 1996 have</p> <p>18 contained all of Enzo Diagnostics, Inc. products</p> <p>19 that were then sold?</p> <p>20 A. It might not have contained all of</p> <p>21 them.</p> <p>22 Q. What products would not have been</p> <p>23 contained in the catalog for Enzo Diagnostics,</p> <p>24 Inc.?</p> <p>25 A. I couldn't remember that at this point</p> |

8 (Pages 26 to 29)

BARRY W. WEINER - HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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1 HIGHLY CONFIDENTIAL - B. Weiner
2 A. I would have to check with our -- you
3 know, our marketing people to see how they would
4 be able to do such, if they do that.

5 Q. And who do you contact in marketing
6 today?

7 A. I would speak to Mr. Andrew Whiteley.

8
9 Q. So returning to catalog sales by Enzo
10 Diagnostics or Enzo Life Sciences, what types of
11 customers purchase products from the catalogs?

12 MR. ELLIOTT: Objection.

13 A. I'm not sure what type of customers
14 purchase from catalogs. There are many types of
15 customers.

16 You know, people utilize different
17 tools to access product.

18 Specifically from a catalog? I mean,
19 it could be anybody.

20 Q. Well would it be -- would academic
21 institutions purchase from a catalog?

22 A. Yes.

23 Q. Pharmaceutical companies?

24 A. Yes.

25 Q. Other biotechnology companies?

1 HIGHLY CONFIDENTIAL - B. Weiner

2 Q. So if we could, I'd like to focus just
3 on catalog sales and what types of customers make
4 purchases from the Life Sciences catalog.

5 And in that regard are you aware of
6 pharmaceutical companies purchasing products from
7 the Life Sciences catalog?

8 A. I personally am not involved with the
9 order taking, with the marketing of Life Science
10 products, so I can't speak to the specific
11 parties that might purchase specifically from a
12 catalog.

13 I'm not on that front line to deal
14 with that.

15 Q. But it wouldn't surprise you to learn
16 that pharmaceutical companies purchase products
17 from the Life Sciences catalog?

18 MR. ELLIOTT: Objection.

19 A. Anyone could purchase from any source
20 that they find and they deem within the public
21 domain.

22 Q. So, Mr. Weiner, if we focus on Enzo
23 Diagnostics and Enzo Life Sciences, did either of
24 those companies ever market or sell a diagnostic
25 product?

39

41

1 HIGHLY CONFIDENTIAL - B. Weiner

2 A. Yes.

3 Q. Government institutions?

4 A. Yes.

5 Q. Any other categories or types of
6 customers you can think of?

7 MR. ELLIOTT: Objection.

8 A. I mean, anyone could purchase from a
9 catalog.

10 It depends what, you know, type of
11 work they're interested in and what products
12 they're interested in.

13 It could be individual scientists.

14 Q. Are you aware of academic
15 institutions, pharmaceutical companies,
16 biotechnology companies, and government
17 institutions purchasing from the catalog?

18 A. All the entities you named acquire
19 products from us.

20 Whether they purchase them via
21 catalog, via electronic interface versus sales
22 interface, I don't know the source of their
23 motivation.

24 But they are all clientele, amongst
25 others, of our product lines.

1 HIGHLY CONFIDENTIAL - B. Weiner

2 MR. ELLIOTT: Objection.

3 This is pretty clearly not 30(b)(6)
4 topic testimony right now.

5 Q. Go ahead.

6 A. We sell products that allow for
7 clinical identification, that allow for the
8 understanding of biological content.

9 You can call it diagnostic. You can
10 call it clinical investigation.

11 But I think we very clearly delineate
12 the utility of our products, and they are
13 purchased for a utility for better understanding
14 of biological information.

15 So "diagnostic" is a very broad term.

16 Q. Well what is your understanding of
17 "diagnostic"?

18 A. My understanding of "diagnostic," by
19 definition, is to be able to discover something,
20 as a methodology for discovering something that
21 one does not know.

22 Q. So your understanding of "diagnostic"
23 doesn't require a diagnosis?

24 MR. ELLIOTT: Objection.

25 A. I don't understand what your -- what

11 (Pages 38 to 41)

BARRY W. WEINER - HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

| | |
|--|---|
| <p style="text-align: right;">62</p> <p>1 HIGHLY CONFIDENTIAL - B. Weiner</p> <p>2 Q. Sure. Absent the litigation</p> <p>3 settlement in 1995, four out of the five years</p> <p>4 between 1992 and 1996 would have been loss years?</p> <p>5 MR. ELLIOTT: Objection.</p> <p>6 A. We showed a loss for the -- for years</p> <p>7 '92, '93, and '96.</p> <p>8 If one were to extract the litigation</p> <p>9 settlement from '95, we would have shown a -- a</p> <p>10 net income loss.</p> <p>11 Q. If you can turn with me to -- it's</p> <p>12 F-25, 383075.</p> <p>13 Just let me know when you've had a</p> <p>14 chance to look at the page.</p> <p>15 (Document review.)</p> <p>16 A. Okay.</p> <p>17 Q. Okay. And what's shown on F-25 -- and</p> <p>18 you should tell me if I'm wrong -- is the</p> <p>19 financials for each line of business of Enzo at</p> <p>20 the time, is that right?</p> <p>21 A. Yes.</p> <p>22 Q. And one of the lines of business is</p> <p>23 designated, "Research and Development," correct?</p> <p>24 A. Yes.</p> <p>25 Q. And the other is "Clinical Reference</p> | <p style="text-align: right;">64</p> <p>1 HIGHLY CONFIDENTIAL - B. Weiner</p> <p>2 Q. Have you ever heard of the Ward</p> <p>3 patents?</p> <p>4 A. Oh, yes.</p> <p>5 Q. Do you have an understanding as to</p> <p>6 where Enzo acquired -- whether Enzo acquired a</p> <p>7 license for the Ward patents?</p> <p>8 A. Yes, we acquired a license for it,</p> <p>9 yes.</p> <p>10 Q. The revenues as reflected in this</p> <p>11 column under research and development, do those</p> <p>12 reflect revenues from development and licensing</p> <p>13 activities related to the Ward patents?</p> <p>14 MR. ELLIOTT: Objection.</p> <p>15 A. I mean, I can't remember back what the</p> <p>16 exact line items that constitute the sales and</p> <p>17 diagnostic services line involved right now.</p> <p>18 MR. ELLIOTT: I'd also like to raise</p> <p>19 an objection to the relevance of this.</p> <p>20 The word "patents" are not part of</p> <p>21 this discovery process.</p> <p>22 MR. KHAN: Sure. We disagree.</p> <p>23 Let me just read your answer,</p> <p>24 Mr. Weiner. Just give me a second.</p> <p>25 MR. ELLIOTT: I don't think there was</p> |
| <p style="text-align: right;">63</p> <p>1 HIGHLY CONFIDENTIAL - B. Weiner</p> <p>2 Labs," is that right?</p> <p>3 A. Yes.</p> <p>4 Q. Now research and development, that is</p> <p>5 not -- the numbers in the research and</p> <p>6 development column are not the costs or expenses</p> <p>7 associated with research and development; those</p> <p>8 are the revenues for that particular line of</p> <p>9 business, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And is it fair to say that the</p> <p>12 research and development line of business here,</p> <p>13 what we're referring to is Enzo Diagnostics?</p> <p>14 A. Yes.</p> <p>15 Q. Why is the report referring to Enzo</p> <p>16 Diagnostics as research and development?</p> <p>17 A. It's our line of business report. It</p> <p>18 breaks it down by line of business.</p> <p>19 Diagnostics is a research and</p> <p>20 development business. Enzo Life Sciences is a</p> <p>21 research and development business.</p> <p>22 Q. Do you have an understanding as to the</p> <p>23 Ward patents?</p> <p>24 A. I'm not technically, you know,</p> <p>25 involved in IP or patent --</p> | <p style="text-align: right;">65</p> <p>1 HIGHLY CONFIDENTIAL - B. Weiner</p> <p>2 a question pending.</p> <p>3 MR. KHAN: There was.</p> <p>4 THE WITNESS: Can we take a bathroom</p> <p>5 break when you finish your line?</p> <p>6 MR. KHAN: Let's take a break.</p> <p>7 VIDEO OPERATOR: The time is 11:11</p> <p>8 a.m. We're going off the record.</p> <p>9 (Recess taken from 11:00 a.m. to 11:29</p> <p>10 a.m.)</p> <p>11 VIDEO OPERATOR: The time is 11:29</p> <p>12 a.m. We're back on the record.</p> <p>13 BY MR. KHAN:</p> <p>14 Q. Mr. Weiner, before we come back to the</p> <p>15 financials I just wanted to follow-up on our</p> <p>16 earlier discussion about catalog versus</p> <p>17 noncatalog sales.</p> <p>18 And if we could go to Weiner 3.</p> <p>19 If you'd turn to the last page, which</p> <p>20 is the back of the price list. There's actually</p> <p>21 a page after that. It's double-sided.</p> <p>22 And then the last page is E 00029406.</p> <p>23 And then under "Research Use Only,"</p> <p>24 which is the second division from the top on the</p> <p>25 page, it says, "All products sold by Enzo</p> |

17 (Pages 62 to 65)

BARRY W. WEINER - HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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|---|--|
| <p>66</p> <p>1 HIGHLY CONFIDENTIAL - B. Weiner</p> <p>2 Diagnostics, Inc. are for research purposes</p> <p>3 only."</p> <p>4 And then it goes on.</p> <p>5 Does that refresh your memory as to</p> <p>6 whether at least in this time frame, in 1996, all</p> <p>7 products sold by Enzo Diagnostics were reflected</p> <p>8 in the catalogs?</p> <p>9 MR. ELLIOTT: I'd like to raise my</p> <p>10 continuing objection that this line of</p> <p>11 questioning is outside the 30(b)(6) notice.</p> <p>12 A. All the statement is is a statement of</p> <p>13 use, in terms of products can be used for</p> <p>14 research purposes or clinical diagnostic use,</p> <p>15 which is a disclaimer for -- put on all RUI</p> <p>16 products, which is what we sell, which are</p> <p>17 research-use-only products.</p> <p>18 But research-use-only products can be</p> <p>19 used in the broad sense for diagnostics.</p> <p>20 And that's -- you know, if you look in</p> <p>21 the specific products, you will see gene</p> <p>22 identification DNA PathoGene products.</p> <p>23 Those are research-use-only products</p> <p>24 that have a diagnostic utility.</p> <p>25 And that's to clearly delineate the</p> | <p>68</p> <p>1 HIGHLY CONFIDENTIAL - B. Weiner</p> <p>2 it and how you wish to utilize it.</p> <p>3 The products we sell in our catalog,</p> <p>4 specifically here, are labeled for research use</p> <p>5 only. And that's what that line delineates.</p> <p>6 Q. Understood. So you're saying the</p> <p>7 products in the catalog can be used for research</p> <p>8 uses, but not diagnostic uses, which encompasses</p> <p>9 both FDA-approved diagnostic uses, but also</p> <p>10 clinical lab diagnostic uses; is that fair to</p> <p>11 say?</p> <p>12 A. No, no. That's not what I said at</p> <p>13 all.</p> <p>14 Q. Okay.</p> <p>15 A. The products -- simply the products we</p> <p>16 are selling are for research use only under the</p> <p>17 accepted definition of research use and within</p> <p>18 the research products marketplace.</p> <p>19 They are not FDA-approved clinical</p> <p>20 diagnostics.</p> <p>21 That's the distinction being made.</p> <p>22 Q. Okay. If I were to purchase a product</p> <p>23 in Enzo's catalog in around 1996, would I be</p> <p>24 permitted to use it in a nonFDA-approved</p> <p>25 diagnostic setting?</p> |
| <p>67</p> <p>1 HIGHLY CONFIDENTIAL - B. Weiner</p> <p>2 difference between an FDA-approved research</p> <p>3 product and not.</p> <p>4 An FDA research product tends to have</p> <p>5 a much higher order of -- of compensation and</p> <p>6 utility and recognition by the industry.</p> <p>7 Q. Okay. So products such as the</p> <p>8 PathoGene products sold from this catalog, one of</p> <p>9 the intended uses of those products sold from the</p> <p>10 catalog would be used in connection with a</p> <p>11 diagnostic utility, is that you're saying?</p> <p>12 MR. ELLIOTT: Objection.</p> <p>13 A. No, that's not what I said.</p> <p>14 The definition of a clinical</p> <p>15 diagnostic is typically an FDA-approved</p> <p>16 diagnostic.</p> <p>17 We at Enzo Clinical Labs perform tests</p> <p>18 that are not FDA approved, as every other lab in</p> <p>19 the industry does.</p> <p>20 They are diagnostics, but they are not</p> <p>21 necessarily FDA approved.</p> <p>22 They may be an LDT, a lab developed</p> <p>23 test. It may be a research form of diagnostic.</p> <p>24 "Diagnostic" has a very broad</p> <p>25 definition. And it depends how you characterize</p> | <p>69</p> <p>1 HIGHLY CONFIDENTIAL - B. Weiner</p> <p>2 MR. ELLIOTT: Objection.</p> <p>3 A. I'm sorry, I don't understand what</p> <p>4 you're saying.</p> <p>5 Q. Sure. I understood you earlier to</p> <p>6 say, you know, "diagnostic" is a broader term</p> <p>7 that refers not only to FDA-approved diagnostic</p> <p>8 tests or services, but also LDT or CLIA lab test</p> <p>9 services; is that fair to say?</p> <p>10 A. No.</p> <p>11 Q. Okay.</p> <p>12 A. The term "diagnostic" as you</p> <p>13 positioned it to me, the way I interpret it, is a</p> <p>14 broader concept of utility.</p> <p>15 Q. Okay.</p> <p>16 A. It's the definition of the word that I</p> <p>17 think we are talking about right now.</p> <p>18 A pathologist can buy a probe, use the</p> <p>19 probe in his exploration of tissue, and create a</p> <p>20 diagnostic determination from that.</p> <p>21 That is not an FDA-approved</p> <p>22 diagnostic.</p> <p>23 There are FDA-approved diagnostic</p> <p>24 packages that have bona fide, validated claims</p> <p>25 submitted to the FDA.</p> |

18 (Pages 66 to 69)

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| <p style="text-align: right;">70</p> <p>1 HIGHLY CONFIDENTIAL - B. Weiner</p> <p>2 Those tend to command, you know, a</p> <p>3 higher level of appreciation within the</p> <p>4 diagnostics industry.</p> <p>5 The products we sell, and are</p> <p>6 delineated by this particular definition, are</p> <p>7 products which are labeled "research use only"</p> <p>8 because they are not FDA-cleared products.</p> <p>9 That is the distinction.</p> <p>10 Q. And so would a pathologist be</p> <p>11 permitted to use these products in -- in his or</p> <p>12 her lab or clinic?</p> <p>13 MR. ELLIOTT: Objection.</p> <p>14 A. A pathologist, by the definition of</p> <p>15 his training and his MD, can look at a slide and</p> <p>16 make a diagnostic determination.</p> <p>17 He can use any type of product he</p> <p>18 wants to do that, because he's relying on his</p> <p>19 eyes to make that diagnostic determination.</p> <p>20 So a pathologist could -- you know,</p> <p>21 certainly could buy any reagent tier and use it</p> <p>22 within his own purview.</p> <p>23 Q. Sure.</p> <p>24 But the research-use-only limitation,</p> <p>25 does that prohibit a pathologist from using</p> | <p style="text-align: right;">72</p> <p>1 HIGHLY CONFIDENTIAL - B. Weiner</p> <p>2 I'm just asking about, you know, sales</p> <p>3 by Enzo Diagnostics, catalog sales by Enzo</p> <p>4 Diagnostics. It falls within the topic.</p> <p>5 I know you disagree.</p> <p>6 And, you know, if you want a</p> <p>7 continuing objection, you can have a</p> <p>8 continuing objection.</p> <p>9 If you want to keep objecting every</p> <p>10 question, that's all your prerogative.</p> <p>11 MR. ELLIOTT: Okay.</p> <p>12 Q. So now unfortunately I forgot what the</p> <p>13 question was, but -- how about this.</p> <p>14 Could a pathologist purchase an Enzo</p> <p>15 product from the catalog and use it in his or her</p> <p>16 lab to perform diagnostic functions?</p> <p>17 MR. ELLIOTT: Objection, lack of</p> <p>18 foundation, lack of personal knowledge.</p> <p>19 A. I'm -- I cannot tell you what the</p> <p>20 specific practices are of given pathologists, but</p> <p>21 a pathologist could purchase a research-use-only</p> <p>22 product and use it within his practice.</p> <p>23 Q. And that would be permitted under the</p> <p>24 research use limitation in the catalog?</p> <p>25 MR. ELLIOTT: Objection.</p> |
| <p style="text-align: right;">71</p> <p>1 HIGHLY CONFIDENTIAL - B. Weiner</p> <p>2 products sold from the catalog in his or her</p> <p>3 clinic or lab in connection --</p> <p>4 A. No. Every --</p> <p>5 MR. ELLIOTT: Objection.</p> <p>6 This is a continuing -- I'm continuing</p> <p>7 my objection to this line of questioning as</p> <p>8 outside the 30(b)(6) notice.</p> <p>9 And, frankly, I don't see how it's</p> <p>10 relevant to any of the topics that were</p> <p>11 noticed here on this or to the patent</p> <p>12 infringement action, which is what we're</p> <p>13 directing this whole discovery process</p> <p>14 towards.</p> <p>15 It seems to me this is more directed</p> <p>16 towards the contract action.</p> <p>17 And I just would like to make it clear</p> <p>18 that this is all outside the 30(b)(6) notice</p> <p>19 and irrelevant to this proceeding as it</p> <p>20 stands right now.</p> <p>21 MR. KHAN: Okay. John, you have our</p> <p>22 position from earlier.</p> <p>23 We disagree.</p> <p>24 One of the noticed topics is Enzo's</p> <p>25 business and operations.</p> | <p style="text-align: right;">73</p> <p>1 HIGHLY CONFIDENTIAL - B. Weiner</p> <p>2 You're asking for legal conclusions</p> <p>3 and speculation, and this is all totally</p> <p>4 hypothetical.</p> <p>5 A. I can't, you know, comment on every</p> <p>6 pathologist in the practice.</p> <p>7 But pathologists could buy Enzo</p> <p>8 products and use them in their work, however that</p> <p>9 work might manifest itself.</p> <p>10 Q. And the research-use-only limitation</p> <p>11 doesn't prohibit that, is that right?</p> <p>12 MR. ELLIOTT: Objection.</p> <p>13 A. I don't know what the individual's</p> <p>14 practice requirements might determine his utility</p> <p>15 motives.</p> <p>16 Anyone -- anyone can buy a product and</p> <p>17 use it for research purposes only in whatever</p> <p>18 manner they wish to use it.</p> <p>19 The ultimate utility of a decision</p> <p>20 outcome would have to be formed by his own legal</p> <p>21 requirements, by his own methodologies of</p> <p>22 practice.</p> <p>23 Q. I'm just trying to understand whether</p> <p>24 the pathologist using a product purchased from</p> <p>25 the catalog, whether he or she is allowed to use</p> |

19 (Pages 70 to 73)

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| <p>74</p> <p>1 HIGHLY CONFIDENTIAL - B. Weiner</p> <p>2 that product for diagnostic purposes in his or</p> <p>3 her lab under the research use limitation, yes or</p> <p>4 no?</p> <p>5 MR. ELLIOTT: Objection.</p> <p>6 This is calling for a legal</p> <p>7 conclusion, totally hypothetical and</p> <p>8 speculative and irrelevant to the patent</p> <p>9 proceedings as they stand now.</p> <p>10 A. I can't comment on what every given</p> <p>11 pathologist -- in terms of the way they manage</p> <p>12 their practice, the products they use, or the</p> <p>13 protocols delineated to him by the institution</p> <p>14 within which he works -- can formulate his</p> <p>15 diagnostic decision.</p> <p>16 A pathologist can buy a research</p> <p>17 product and use it in the determination of</p> <p>18 pathology specimens.</p> <p>19 It's done every day.</p> <p>20 Q. And a pathologist buying a research</p> <p>21 product and using it in a determination of</p> <p>22 pathology specimens, that purchase and that use</p> <p>23 is not prohibited by the research-use-only</p> <p>24 limitation in the catalog, right?</p> <p>25 MR. ELLIOTT: Objection, calling for a</p> | <p>76</p> <p>1 HIGHLY CONFIDENTIAL - B. Weiner</p> <p>2 statement on the last page of the price list, you</p> <p>3 did not agree with me that that suggested that</p> <p>4 all products sold by Enzo Diagnostics were</p> <p>5 contained in the catalog, right?</p> <p>6 A. My point is that we may sell products</p> <p>7 that are not listed in a price sheet or a</p> <p>8 catalog.</p> <p>9 Simply, all products do not</p> <p>10 necessarily have to be listed in a catalog.</p> <p>11 And that's -- that was my response.</p> <p>12 Q. Okay. Earlier when you were talking</p> <p>13 about this research-use-only provision in the</p> <p>14 Enzo catalog, you mentioned that -- the research</p> <p>15 products marketplace.</p> <p>16 Do you recall that?</p> <p>17 A. I don't know -- did I mention what</p> <p>18 about the research products marketplace?</p> <p>19 Q. Just that there was such a research</p> <p>20 products marketplace.</p> <p>21 Do you recall that?</p> <p>22 A. There is a research products</p> <p>23 marketplace, yes.</p> <p>24 I don't know what you're recalling it</p> <p>25 in context of what though.</p> |
| <p>75</p> <p>1 HIGHLY CONFIDENTIAL - B. Weiner</p> <p>2 legal conclusion, speculative.</p> <p>3 A. I'm really not sure what your question</p> <p>4 is on that.</p> <p>5 Q. I think we're missing each other a</p> <p>6 little bit, so let me back up and explain.</p> <p>7 So all I'm trying do is understand,</p> <p>8 you know, at the time in or around 1996 what Enzo</p> <p>9 Diagnostics was selling, who it was selling it</p> <p>10 to.</p> <p>11 And, you know, earlier we talked about</p> <p>12 catalog versus noncatalog sales.</p> <p>13 And I thought to show you the</p> <p>14 catalog -- the price list again, because it</p> <p>15 suggests that all products sold by Enzo</p> <p>16 Diagnostics are for research purposes only, and</p> <p>17 it suggests that all the products are contained</p> <p>18 in the catalog.</p> <p>19 We disagreed about that.</p> <p>20 A. We disagreed about what?</p> <p>21 Q. About whether all products sold in</p> <p>22 the -- are reflected in the catalog.</p> <p>23 A. How could we disagree about it? You</p> <p>24 don't know what products we sell or don't sell.</p> <p>25 Q. Sorry. You did not agree that this</p> | <p>77</p> <p>1 HIGHLY CONFIDENTIAL - B. Weiner</p> <p>2 Q. Sure. And who are the customers in</p> <p>3 the research products marketplace?</p> <p>4 MR. ELLIOTT: Objection.</p> <p>5 A. There could be many customers.</p> <p>6 I suspect it's anyone doing research,</p> <p>7 whether it's in academia, pharma, clinical</p> <p>8 laboratory world.</p> <p>9 It revolves around scientific</p> <p>10 research.</p> <p>11 Q. Would that include research in the</p> <p>12 context of -- as a precursor to product</p> <p>13 development?</p> <p>14 MR. ELLIOTT: Objection, vague.</p> <p>15 A. The research products marketplace, as</p> <p>16 you've asked, can encompass any type of</p> <p>17 scientific research, whether it's in product</p> <p>18 development, whether it's in basic exploration,</p> <p>19 whether it's in drug development.</p> <p>20 I mean, it's all basic biochemical,</p> <p>21 biomedical research.</p> <p>22 I don't think you can -- I think it's</p> <p>23 a very broad encompassment of anyone doing core</p> <p>24 scientific biomedical research.</p> <p>25 Q. If we can return to the financials,</p> |

20 (Pages 74 to 77)

Exhibit B

PRICE INDEX 1996

Contents

- ◆ SECTION 1
Nonradioactive Labeling of Nucleic Acids
- ◆ SECTION 2
Membrane Hybridization and Detection
- ◆ SECTION 3
In Situ Hybridization and Detection Systems
- ◆ SECTION 4
BioProbe® Labeled Probes
- ◆ SECTION 5
Signal Generating Systems
- ◆ SECTION 6
Microplate Hybridization Assays
- ◆ SECTION 7
Immunopathology Reagents



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|------------------|
| SECTION 1 |
|------------------|

NONRADIOACTIVE LABELING OF NUCLEIC ACIDS

| Cat. No. | Product | Quantity | Price |
|--|---|-----------------|--------------|
| <i>BioProbe® Nick Translation DNA Labeling Systems</i> | | | |
| Nick Translation Labeling Kits | | | |
| 42710-11 | Nick Translation Kit with Bio-11-dUTP | 25 reactions | \$230.00 |
| 42710-12 | Nick Translation Kit with Bio-16-dUTP | 25 reactions | 230.00 |
| 42710-13 | Nick Translation Kit with Bio-11-dCTP | 25 reactions | 230.00 |
| 42710-14 | Nick Translation Kit with Bio-7-dATP | 25 reactions | 230.00 |
| 42710-15 | Nick Translation Kit with Digoxigenin-11-dUTP | 25 reactions | 230.00 |
| 42710-16 | Nick Translation Kit with Fluorescein-12-dUTP | 25 reactions | 230.00 |
| Nick Translation Deoxynucleotide Packs | | | |
| 42711 | Bio-11-dUTP for Nick Translation | 25 reactions | 140.00 |
| 42712 | Bio-16-dUTP for Nick Translation | 25 reactions | 140.00 |
| 42713 | Bio-11-dCTP for Nick Translation | 25 reactions | 140.00 |
| 42714 | Bio-7-dATP for Nick Translation | 25 reactions | 140.00 |
| 42715 | Digoxigenin-11-dUTP for Nick Translation | 25 reactions | 140.00 |
| 42716 | Fluorescein-12-dUTP for Nick Translation | 25 reactions | 140.00 |
| Nick Translation Reagent Pack | | | |
| 42710 | Reagent Pack for Nick Translation | 25 reactions | 105.00 |
| <i>BioProbe® Random Primed DNA Labeling Systems</i> | | | |
| Random Primed Labeling Kits | | | |
| 42720-21 | Random Primed Labeling Kit with Bio-11-dUTP | 25 reactions | 230.00 |
| 42720-22 | Random Primed Labeling Kit with Bio-16-dUTP | 25 reactions | 230.00 |
| 42720-23 | Random Primed Labeling Kit with Bio-11-dCTP | 25 reactions | 230.00 |
| 42720-24 | Random Primed Labeling Kit with Bio-7-dATP | 25 reactions | 230.00 |
| 42720-25 | Random Primed Labeling Kit with Digoxigenin-11-dUTP | 25 reactions | 230.00 |
| 42720-26 | Random Primed Labeling Kit with Fluorescein-12-dUTP | 25 reactions | 230.00 |
| Random Primed Deoxynucleotide Packs | | | |
| 42721 | Bio-11-dUTP for Random Primed Labeling | 25 reactions | 140.00 |
| 42722 | Bio-16-dUTP for Random Primed Labeling | 25 reactions | 140.00 |
| 42723 | Bio-11-dCTP for Random Primed Labeling | 25 reactions | 140.00 |
| 42724 | Bio-7-dATP for Random Primed Labeling | 25 reactions | 140.00 |
| 42725 | Digoxigenin-11-dUTP for Random Primed Labeling | 25 reactions | 140.00 |
| 42726 | Fluorescein-12-dUTP for Random Primed Labeling | 25 reactions | 140.00 |
| Random Primed Labeling Reagent Pack | | | |
| 42720 | Reagent Pack for Random Primed Labeling | 25 reactions | 105.00 |

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| Cat. No. | Product | Quantity | Price |
|--|---|-----------------|--------------|
| <i>BioProbe® 3'-Oligonucleotide Labeling Systems</i> | | | |
| 3'-Oligo Labeling Kits | | | |
| 42730-31 | 3'-Oligo Labeling Kit with Bio-16-ddUTP..... | 25 reactions | \$315.00 |
| 42730-32 | 3'-Oligo Labeling Kit with Digoxigenin-11-ddUTP | 25 reactions | 315.00 |
| 42730-33 | 3'-Oligo Labeling Kit with Fluorescein-12-ddUTP..... | 25 reactions | 315.00 |
| 3'-Oligo Dideoxynucleotide Packs | | | |
| 42731 | Bio-16-ddUTP for 3'-Oligo Labeling..... | 25 reactions | 140.00 |
| 42732 | Digoxigenin-11-ddUTP for 3'-Oligo Labeling | 25 reactions | 140.00 |
| 42733 | Fluorescein-12-ddUTP for 3'-Oligo Labeling | 25 reactions | 140.00 |
| 3'-Oligo Tailing Kits | | | |
| 42730-41 | 3'-Oligo Tailing Kit with Bio-11-dUTP | 25 reactions | 315.00 |
| 42730-42 | 3'-Oligo Tailing Kit with Bio-16-dUTP | 25 reactions | 315.00 |
| 42730-43 | 3'-Oligo Tailing Kit with Bio-11-dCTP..... | 25 reactions | 315.00 |
| 42730-44 | 3'-Oligo Tailing Kit with Bio-7-dATP | 25 reactions | 315.00 |
| 42730-45 | 3'-Oligo Tailing Kit with Digoxigenin-11-dUTP..... | 25 reactions | 315.00 |
| 42730-46 | 3'-Oligo Tailing Kit with Fluorescein-12-dUTP..... | 25 reactions | 315.00 |
| 3'-Oligo Deoxynucleotide Packs | | | |
| 42741 | Bio-11-dUTP for 3'-Oligo Tailing | 25 reactions | 140.00 |
| 42742 | Bio-16-dUTP for 3'-Oligo Tailing | 25 reactions | 140.00 |
| 42743 | Bio-11-dCTP for 3'-Oligo Tailing | 25 reactions | 140.00 |
| 42744 | Bio-7-dATP for 3'-Oligo Tailing | 25 reactions | 140.00 |
| 42745 | Digoxigenin-11-dUTP for 3'-Oligo Tailing..... | 25 reactions | 140.00 |
| 42746 | Fluorescein-12-dUTP for 3'-Oligo Tailing..... | 25 reactions | 140.00 |
| OligoBridge™ Labeling Kits | | | |
| 42730-36 | OligoBridge™ Labeling Kit..... | 25 reactions | 315.00 |
| OligoBridge™ Nucleotide Pack | | | |
| 42736 | Nucleotide Pack for OligoBridge™ Labeling | 25 reactions | 140.00 |
| Oligo Labeling Reagent Pack | | | |
| 42730 | Reagent Pack for Oligonucleotide Labeling | 25 reactions | 190.00 |
| <i>BioProbe® RNA Transcript Labeling Systems</i> | | | |
| RNA Labeling Kits | | | |
| 42750-51 | RNA Labeling Kit with Bio-11-UTP | 20 reactions | 330.00 |
| 42750-52 | RNA Labeling Kit with Bio-16-UTP | 20 reactions | 330.00 |
| 42750-53 | RNA Labeling Kit with Bio-11-CTP..... | 20 reactions | 330.00 |
| 42750-54 | RNA Labeling Kit with Bio-17-ATP | 20 reactions | 330.00 |
| 42750-55 | RNA Labeling Kit with Digoxigenin-11-UTP..... | 20 reactions | 330.00 |
| 42750-56 | RNA Labeling Kit with Fluorescein-12-UTP..... | 20 reactions | 330.00 |

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NONRADIOACTIVE LABELING OF NUCLEIC ACIDS (continued)

| Cat. No. | Product | Quantity | Price |
|---|---|-----------------|--------------|
| Ribonucleotide Packs | | | |
| 42751 | Bio-11-UTP for RNA Labeling | 20 reactions | \$225.00 |
| 42752 | Bio-16-UTP for RNA Labeling | 20 reactions | 225.00 |
| 42753 | Bio-11-CTP for RNA Labeling | 20 reactions | 225.00 |
| 42754 | Bio-17-ATP for RNA Labeling | 20 reactions | 225.00 |
| 42755 | Digoxigenin-11-UTP for RNA Labeling | 20 reactions | 225.00 |
| 42756 | Fluorescein-12-UTP for RNA Labeling | 20 reactions | 225.00 |
| RNA Labeling Reagent Pack | | | |
| 42750 | Reagent Pack for RNA Labeling | 20 reactions | 125.00 |
| Deoxynucleotides | | | |
| 42806 | Bio-11-dUTP | 50 nmol | 285.00 |
| 42811 | Bio-16-dUTP | 50 nmol | 285.00 |
| 42816 | Bio-11-dCTP | 50 nmol | 285.00 |
| 42812 | Bio-AP3-dCTP | 22.5 nmol | 230.00 |
| 42819 | Bio-7-dATP | 50 nmol | 285.00 |
| 42821 | Digoxigenin-11-dUTP, alkali labile | 25 nmol | 140.00 |
| 42822 | Digoxigenin-11-dUTP, alkali stable | 25 nmol | 140.00 |
| 42831 | Fluorescein-12-dUTP | 25 nmol | 140.00 |
| 42841 | Rhodamine-5-dUTP | 25 nmol | 140.00 |
| 42851 | Coumarin-6-dUTP | 25 nmol | 140.00 |
| Dideoxynucleotides | | | |
| 42813 | Bio-16-ddUTP | 25 nmol | 140.00 |
| 42823 | Digoxigenin-11-ddUTP | 25 nmol | 140.00 |
| 42833 | Fluorescein-12-ddUTP | 25 nmol | 140.00 |
| Ribonucleotides | | | |
| 42815 | Bio-11-UTP | 250 nmol | 140.00 |
| 42814 | Bio-16-UTP | 250 nmol | 140.00 |
| 42818 | Bio-11-CTP | 250 nmol | 140.00 |
| 42817 | Bio-17-ATP | 250 nmol | 140.00 |
| 42824 | Digoxigenin-11-UTP | 250 nmol | 140.00 |
| 42834 | Fluorescein-12-UTP | 250 nmol | 140.00 |
| Labeling Accessories - Glass Fiber Filters | | | |
| 44524 | Disc (24 mm diameter) | 400/box | 60.00 |
| 44525 | Disc (25 mm diameter) | 400/box | 60.00 |
| 44101 | Rectangle (10.25 cm x 25.4 cm) | 100/box | 120.00 |

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| SECTION 2 |
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MEMBRANE HYBRIDIZATION AND DETECTION

| Cat. No. | Product | Quantity | Price |
|--|--|--------------------------|--------------|
| <i>MaxSense™ Membrane Hybridization Systems</i> | | | |
| 45500 | MaxSense™ BioProbe® Membrane Hybridization System (for DNA & RNA Probes)..... | 10 blots 10 x 10 cm each | \$135.00 |
| 45600 | MaxSense™ OligoProbe™ Membrane Hybridization System (for Oligonucleotide Probes)..... | 10 blots 10 x 10 cm each | 135.00 |
| <i>MaxSense™ Detection Systems</i> | | | |
| 45401 | BioDETEK® HP Hrp Membrane Detection System..... | 1000 cm ² | 195.00 |
| 45402 | BioDETEK® Alk Membrane Detection System | 1000 cm ² | 195.00 |
| 45403 | DigDETEK® HP Hrp Membrane Detection System | 1000 cm ² | 195.00 |
| 45404 | DigDETEK® AP Membrane Detection System..... | 1000 cm ² | 195.00 |
| 45405 | FluorDETEK® Hrp Membrane Detection System | 1000 cm ² | 195.00 |
| 45406 | FluorDETEK® AP Membrane Detection System | 1000 cm ² | 195.00 |
| <i>MaxSense™ BioProbe® Hybridization and Detection System Kits for DNA and RNA Probes</i> | | | |
| <u><i>Horseradish Peroxidase Detection System</i></u> | | | |
| 45501 | BioDETEK® HP Hrp Complete BioProbe® Membrane System..... | 10 blots 10 x 10 cm each | 310.00 |
| 45503 | DigDETEK® HP Hrp Complete BioProbe® Membrane System | 10 blots 10 x 10 cm each | 310.00 |
| 45505 | FluorDETEK® Hrp Complete BioProbe® Membrane System | 10 blots 10 x 10 cm each | 310.00 |
| <u><i>Alkaline Phosphatase Detection System</i></u> | | | |
| 45502 | BioDETEK® Alk Complete BioProbe® Membrane System | 10 blots 10 x 10 cm each | 310.00 |
| 45504 | DigDETEK® AP Complete BioProbe® Membrane System..... | 10 blots 10 x 10 cm each | 310.00 |
| 45506 | FluorDETEK® AP Complete BioProbe® Membrane System | 10 blots 10 x 10 cm each | 310.00 |
| <i>MaxSense™ OligoProbe Hybridization and Detection System Kits for Oligonucleotide Probes</i> | | | |
| <u><i>Horseradish Peroxidase Detection System</i></u> | | | |
| 45601 | BioDETEK® HP Hrp Complete OligoProbe™ Membrane System..... | 10 blots 10 x 10 cm each | 310.00 |
| 45603 | DigDETEK® HP Hrp Complete OligoProbe™ Membrane System | 10 blots 10 x 10 cm each | 310.00 |
| 45605 | FluorDETEK® Hrp Complete OligoProbe™ Membrane System | 10 blots 10 x 10 cm each | 310.00 |
| <u><i>Alkaline Phosphatase Detection System</i></u> | | | |
| 45602 | BioDETEK® Alk Complete OligoProbe™ Membrane System | 10 blots 10 x 10 cm each | 310.00 |
| 45604 | DigDETEK® AP Complete OligoProbe™ Membrane System | 10 blots 10 x 10 cm each | 310.00 |
| 45606 | FluorDETEK® AP Complete OligoProbe™ Membrane System | 10 blots 10 x 10 cm each | 310.00 |
| <i>MaxSense™ Hybridization and Detection System Accessories</i> | | | |
| 45701 | Hybridization Membrane (roll) | roll, 30 cm x 3 m | 225.00 |
| 45702 | Hybridization Membrane (pre-cut sheets)..... | 10 sheets, 15 cm x 10 cm | 75.00 |
| 45703 | Blocking Solution (ready-to-use) | 100 ml | 50.00 |
| 45704 | Liquid Blocking Reagent (concentrate)..... | 100 ml | 80.00 |
| 45705 | MaxSense™ BioProbe® Hybridization Buffer..... | 150 ml | 50.00 |
| 45706 | MaxSense™ OligoProbe® Hybridization Buffer | 150 ml | 50.00 |

OUTSIDE ATTORNEY'S EYES ONLY E 00029399

MEMBRANE HYBRIDIZATION AND DETECTION (continued)

| Cat. No. | Product | Quantity | Price |
|------------------------|--|-----------------|--------------|
| <i>Dot Blot System</i> | | | |
| 46305 | Dot Blot Hybridization and Detection Assay Kit | 100 test kit | \$750.00 |
| 46305/C | Dot Blot Control DNA Pack | 1 pack | 170.00 |
| 46307 | Dot Blot CMV Control DNA Pack | 1 pack | 135.00 |
| 46308 | Dot Blot HBV Control DNA Pack | 1 pack | 135.00 |

SECTION 3**IN SITU HYBRIDIZATION AND DETECTION SYSTEMS**

| Cat. No. | Product | Quantity | Price |
|---|--|-----------------|--------------|
| <i>Detection Assays</i> | | | |
| <i>Simply Sensitive™ Detection Systems</i> | | | |
| 32830 | Horseradish Peroxidase (Hrp) - AEC System for <i>in situ</i> Detection | 20 slides | \$95.00 |
| 32840 | Horseradish Peroxidase (Hrp) - DAB System for <i>in situ</i> Detection | 20 slides | 95.00 |
| 32850 | Fluorescent Streptavidin (Fl-SA) System for <i>in situ</i> Detection | 20 slides | 95.00 |
| 32860 | Alkaline Phosphatase (Alk Phos) - INT / BCIP System for <i>in situ</i> Detection | 20 slides | 95.00 |
| 32870 | Alkaline Phosphatase (Alk Phos) - NBT / BCIP System for <i>in situ</i> Detection | 20 slides | 95.00 |
| <i>UltraSensitive™ Enhanced Detection Systems</i> | | | |
| 32300 | Enhanced Hrp - AEC System for <i>in situ</i> Detection | 30 slides | 140.00 |
| 32400 | Enhanced Hrp - DAB System for <i>in situ</i> Detection | 30 slides | 140.00 |
| 32500 | Enhanced Fl-SA System for <i>in situ</i> Detection | 30 slides | 140.00 |
| 32600 | Enhanced Alk Phos - INT / BCIP System for <i>in situ</i> Detection | 30 slides | 140.00 |
| 32700 | Enhanced Alk Phos - NBT / BCIP System for <i>in situ</i> Detection | 30 slides | 140.00 |

PathoGene® DNA Probe Assays

| | | | |
|---|---|-----------|--------|
| <i>Simply Sensitive™ - Horseradish Peroxidase - AEC Detection</i> | | | |
| 32801-30 | PathoGene® Assay for Adenovirus / Hrp - AEC | 20 slides | 235.00 |
| 32802-30 | PathoGene® Assay for Cytomegalovirus / Hrp - AEC | 20 slides | 235.00 |
| 32803-30 | PathoGene® Assay for Epstein-Barr Virus / Hrp - AEC | 20 slides | 235.00 |
| 32804-30 | PathoGene® Assay for Hepatitis B Virus / Hrp - AEC | 20 slides | 235.00 |
| 32805-30 | PathoGene® Assay for Herpes Simplex Virus / Hrp - AEC | 20 slides | 235.00 |
| 32806-30 | PathoGene® Assay for <i>Chlamydia trachomatis</i> / Hrp - AEC | 20 slides | 235.00 |
| <i>Simply Sensitive™ - Horseradish Peroxidase - DAB Detection</i> | | | |
| 32801-40 | PathoGene® Assay for Adenovirus / Hrp - DAB | 20 slides | 235.00 |
| 32802-40 | PathoGene® Assay for Cytomegalovirus / Hrp - DAB | 20 slides | 235.00 |
| 32803-40 | PathoGene® Assay for Epstein-Barr Virus / Hrp - DAB | 20 slides | 235.00 |
| 32804-40 | PathoGene® Assay for Hepatitis B Virus / Hrp - DAB | 20 slides | 235.00 |
| 32805-40 | PathoGene® Assay for Herpes Simplex Virus / Hrp - DAB | 20 slides | 235.00 |
| 32806-40 | PathoGene® Assay for <i>Chlamydia trachomatis</i> / Hrp - DAB | 20 slides | 235.00 |

OUTSIDE ATTORNEY'S EYES ONLY E 00029400

| Cat. No. | Product | Quantity | Price |
|--|---|-----------|----------|
| Simply Sensitive™ - Fluorescent Streptavidin Detection | | | |
| 32801-50 | <i>PathoGene</i> ® Assay for Adenovirus / FI-SA | 20 slides | \$235.00 |
| 32802-50 | <i>PathoGene</i> ® Assay for Cytomegalovirus / FI-SA | 20 slides | 235.00 |
| 32803-50 | <i>PathoGene</i> ® Assay for Epstein-Barr Virus / FI-SA | 20 slides | 235.00 |
| 32804-50 | <i>PathoGene</i> ® Assay for Hepatitis B Virus / FI-SA | 20 slides | 235.00 |
| 32805-50 | <i>PathoGene</i> ® Assay for Herpes Simplex Virus / FI-SA | 20 slides | 235.00 |
| 32806-50 | <i>PathoGene</i> ® Assay for <i>Chlamydia trachomatis</i> / FI-SA | 20 slides | 235.00 |
| Simply Sensitive™ - Alkaline Phosphatase - INT / BCIP Detection | | | |
| 32801-60 | <i>PathoGene</i> ® Assay for Adenovirus / Alk Phos - INT / BCIP | 20 slides | 235.00 |
| 32802-60 | <i>PathoGene</i> ® Assay for Cytomegalovirus / Alk Phos - INT / BCIP | 20 slides | 235.00 |
| 32803-60 | <i>PathoGene</i> ® Assay for Epstein-Barr Virus / Alk Phos - INT / BCIP | 20 slides | 235.00 |
| 32804-60 | <i>PathoGene</i> ® Assay for Hepatitis B Virus / Alk Phos - INT / BCIP | 20 slides | 235.00 |
| 32805-60 | <i>PathoGene</i> ® Assay for Herpes Simplex Virus / Alk Phos - INT / BCIP | 20 slides | 235.00 |
| 32806-60 | <i>PathoGene</i> ® Assay for <i>Chlamydia trachomatis</i> / Alk Phos - INT / BCIP | 20 slides | 235.00 |
| Simply Sensitive™ - Alkaline Phosphatase - NBT / BCIP Detection | | | |
| 32801-70 | <i>PathoGene</i> ® Assay for Adenovirus / Alk Phos - NBT / BCIP | 20 slides | 235.00 |
| 32802-70 | <i>PathoGene</i> ® Assay for Cytomegalovirus / Alk Phos - NBT / BCIP | 20 slides | 235.00 |
| 32803-70 | <i>PathoGene</i> ® Assay for Epstein-Barr Virus / Alk Phos - NBT / BCIP | 20 slides | 235.00 |
| 32804-70 | <i>PathoGene</i> ® Assay for Hepatitis B Virus / Alk Phos - NBT / BCIP | 20 slides | 235.00 |
| 32805-70 | <i>PathoGene</i> ® Assay for Herpes Simplex Virus / Alk Phos - NBT / BCIP | 20 slides | 235.00 |
| 32806-70 | <i>PathoGene</i> ® Assay for <i>Chlamydia trachomatis</i> / Alk Phos - NBT / BCIP | 20 slides | 235.00 |
| UltraSensitive™ Enhanced - Horseradish Peroxidase - AEC Detection | | | |
| 32801-33 | <i>PathoGene</i> ® Assay for Adenovirus / Enhanced Hrp - AEC | 20 slides | 290.00 |
| 32802-33 | <i>PathoGene</i> ® Assay for Cytomegalovirus / Enhanced Hrp - AEC | 20 slides | 290.00 |
| 32803-33 | <i>PathoGene</i> ® Assay for Epstein-Barr Virus / Enhanced Hrp - AEC | 20 slides | 290.00 |
| 32804-33 | <i>PathoGene</i> ® Assay for Hepatitis B Virus / Enhanced Hrp - AEC | 20 slides | 290.00 |
| 32805-33 | <i>PathoGene</i> ® Assay for Herpes Simplex Virus / Enhanced Hrp - AEC | 20 slides | 290.00 |
| 32806-33 | <i>PathoGene</i> ® Assay for <i>Chlamydia trachomatis</i> / Enhanced Hrp - AEC | 20 slides | 290.00 |
| UltraSensitive™ Enhanced - Horseradish Peroxidase - DAB Detection | | | |
| 32801-44 | <i>PathoGene</i> ® Assay for Adenovirus / Enhanced Hrp - DAB | 20 slides | 290.00 |
| 32802-44 | <i>PathoGene</i> ® Assay for Cytomegalovirus / Enhanced Hrp - DAB | 20 slides | 290.00 |
| 32803-44 | <i>PathoGene</i> ® Assay for Epstein-Barr Virus / Enhanced Hrp - DAB | 20 slides | 290.00 |
| 32804-44 | <i>PathoGene</i> ® Assay for Hepatitis B Virus / Enhanced Hrp - DAB | 20 slides | 290.00 |
| 32805-44 | <i>PathoGene</i> ® Assay for Herpes Simplex Virus / Enhanced Hrp - DAB | 20 slides | 290.00 |
| 32806-44 | <i>PathoGene</i> ® Assay for <i>Chlamydia trachomatis</i> / Enhanced Hrp - DAB | 20 slides | 290.00 |
| UltraSensitive™ Enhanced - Fluorescent Streptavidin Detection | | | |
| 32801-55 | <i>PathoGene</i> ® Assay for Adenovirus / Enhanced FI -SA | 20 slides | 290.00 |
| 32802-55 | <i>PathoGene</i> ® Assay for Cytomegalovirus / Enhanced FI -SA | 20 slides | 290.00 |
| 32803-55 | <i>PathoGene</i> ® Assay for Epstein-Barr Virus / Enhanced FI -SA | 20 slides | 290.00 |
| 32804-55 | <i>PathoGene</i> ® Assay for Hepatitis B Virus / Enhanced FI -SA | 20 slides | 290.00 |
| 32805-55 | <i>PathoGene</i> ® Assay for Herpes Simplex Virus / Enhanced FI -SA | 20 slides | 290.00 |
| 32806-55 | <i>PathoGene</i> ® Assay for <i>Chlamydia trachomatis</i> / Enhanced FI -SA | 20 slides | 290.00 |

OUTSIDE ATTORNEY'S EYES ONLY E 00029401

IN SITU HYBRIDIZATION ASSAY SYSTEMS (continued)

| Cat. No. | Product | Quantity | Price |
|---|---|------------------|--------------|
| <i>UltraSensitive™ Enhanced - Alkaline Phosphatase - INT / BCIP Detection</i> | | | |
| 32801-66 | <i>PathoGene®</i> Assay for Adenovirus / Enhanced Alk Phos - INT / BCIP..... | 20 slides | \$290.00 |
| 32802-66 | <i>PathoGene®</i> Assay for Cytomegalovirus / Enhanced Alk Phos - INT / BCIP..... | 20 slides | 290.00 |
| 32803-66 | <i>PathoGene®</i> Assay for Epstein-Barr Virus / Enhanced Alk Phos - INT / BCIP..... | 20 slides | 290.00 |
| 32804-66 | <i>PathoGene®</i> Assay for Hepatitis B Virus / Enhanced Alk Phos - INT / BCIP..... | 20 slides | 290.00 |
| 32805-66 | <i>PathoGene®</i> Assay for Herpes Simplex Virus / Enhanced Alk Phos - INT / BCIP..... | 20 slides | 290.00 |
| 32806-66 | <i>PathoGene®</i> Assay for <i>Chlamydia trachomatis</i> / Enhanced Alk Phos - INT / BCIP..... | 20 slides | 290.00 |
| <i>UltraSensitive™ Enhanced - Alkaline Phosphatase - NBT / BCIP Detection</i> | | | |
| 32801-77 | <i>PathoGene®</i> Assay for Adenovirus / Enhanced Alk Phos - NBT / BCIP..... | 20 slides | 290.00 |
| 32802-77 | <i>PathoGene®</i> Assay for Cytomegalovirus / Enhanced Alk Phos - NBT / BCIP..... | 20 slides | 290.00 |
| 32803-77 | <i>PathoGene®</i> Assay for Epstein-Barr Virus / Enhanced Alk Phos - NBT / BCIP..... | 20 slides | 290.00 |
| 32804-77 | <i>PathoGene®</i> Assay for Hepatitis B Virus / Enhanced Alk Phos - NBT / BCIP..... | 20 slides | 290.00 |
| 32805-77 | <i>PathoGene®</i> Assay for Herpes Simplex Virus / Enhanced Alk Phos - NBT / BCIP..... | 20 slides | 290.00 |
| 32806-77 | <i>PathoGene®</i> Assay for <i>Chlamydia trachomatis</i> / Enhanced Alk Phos - NBT / BCIP..... | 20 slides | 290.00 |
| <i>PathoGene® Tissue Preparation Kit and Control Slides</i> | | | |
| 32800 | <i>PathoGene®</i> Tissue Preparation Kit | 20 specimens | 145.00 |
| 31871 | Adenovirus Control Slide..... | 1 slide | 15.00 |
| 31872 | Cytomegalovirus Control Slide..... | 1 slide | 15.00 |
| 31873 | Epstein-Barr Control Slide..... | 1 slide | 15.00 |
| 31875 | Herpes Simplex Virus Control Slide..... | 1 slide | 15.00 |
| 31876 | <i>Chlamydia trachomatis</i> Control Slide..... | 1 slide | 15.00 |
| 31877 | HPV 16 Probe Control Slide..... | 1 slide | 15.00 |
| <i>ApopDETEK® Cell Death Assay Systems</i> | | | |
| 32930 | <i>ApopDETEK®</i> Cell Death Assay / Hrp - AEC | 20 slides | 175.00 |
| 32940 | <i>ApopDETEK®</i> Cell Death Assay / Hrp - DAB | 20 slides | 175.00 |
| 32950 | <i>ApopDETEK®</i> Cell Death Assay / Fl - SA..... | 20 slides | 175.00 |
| 32960 | <i>ApopDETEK®</i> Cell Death Assay / Alk Phos - INT / BCIP | 20 slides | 175.00 |
| 32970 | <i>ApopDETEK®</i> Cell Death Assay / Alk Phos - NBT / BCIP | 20 slides | 175.00 |
| <i>Human Papillomavirus Identification Systems</i> | | | |
| 32881 | <i>BioPap®</i> Human Papillomavirus <i>in situ</i> Screening Assay for Cervical Smears..... | 20 test kit | 345.00 |
| 32892 | <i>BioPap®</i> Human Papillomavirus <i>in situ</i> Typing Assay for Cervical Specimens (Types 6/11, 16/18 and 31/33/51)..... | 10 test kit | 305.00 |
| 32883 | <i>BioPap®</i> Human Papillomavirus <i>in situ</i> Typing Assay Cervical Specimen Transport Kit | for 10 specimens | 35.00 |
| 32879 | <i>PathoGene®</i> Human Papillomavirus <i>in situ</i> Screening Assay for Tissue Sections..... | 20 test kit | 425.00 |
| 32895 | <i>PathoGene®</i> Human Papillomavirus <i>in situ</i> Typing Assay for Tissue Sections (Types 6/11, 16/18 and 31/33/51)..... | 10 test kit | 305.00 |
| 32877 | <i>PathoGene®</i> Hrp-AEC Human Papillomavirus <i>in situ</i> Typing Assay for Tissue Sections (Types 6/11, 16/18 and 31/33/51)..... | 20 test kit | 525.00 |
| 32874 | <i>PathoGene®</i> Hrp-DAB Human Papillomavirus <i>in situ</i> Typing Assay for Tissue Sections (Types 6/11, 16/18 and 31/33/51)..... | 20 test kit | 525.00 |

OUTSIDE ATTORNEY'S EYES ONLY E 00029402

| Cat. No. | Product | Quantity | Price |
|--|--|-------------------------|---------|
| <i>In Situ Hybridization Assay Accessories</i> | | | |
| Specimen Slides | | | |
| 31802/20 | Pretreated slides / single well | 20 slides | \$25.00 |
| 31802/100 | Pretreated slides / single well | 100 slides | 85.00 |
| 31803/20 | Pretreated slides / double well..... | 20 slides | 25.00 |
| 31803/100 | Pretreated slides / double well..... | 100 slides | 85.00 |
| Heating Blocks and Surface Thermometer | | | |
| 31500 | Heating Block, 110V, 50/60 Hz..... | 1 unit | 325.00 |
| 31508 | Heating Block, 220V, 50 Hz..... | 1 unit | 325.00 |
| 31580 | Surface Thermometer | 1 unit | 30.00 |
| Biological Reagents and Buffers | | | |
| 33801 | Proteinase K | 2 x 5 mg | 30.00 |
| 33802 | Enzo Wash Buffer Salts..... | 3 Packets, 1 liter each | 15.00 |
| 33803 | Enzo <i>SignaSure</i> ® Wash Buffer..... | 3 Packets, 1 liter each | 25.00 |
| 33804 | Dilution Buffer for Horseradish Peroxidase-linked Detection Reagents | 100 ml | 30.00 |
| 33805 | Dilution Buffer for Alkaline Phosphatase-linked Detection Reagents..... | 100 ml | 30.00 |
| 33806 | Dilution Buffer for Fluorescence-linked Streptavidin Detection Reagents..... | 100 ml | 30.00 |
| 33807 | Dilution Buffer for Antibody Detection Reagents..... | 100 ml | 30.00 |
| 33808 | <i>In situ</i> Hybridization Buffer (1.25 X concentrate)..... | 10 ml | 25.00 |
| 33809 | <i>In situ</i> Hybridization Wash Reagent | 30 ml | 25.00 |

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| SECTION 4 |
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BioProbe® LABELED PROBES

| Cat. No. | Product | Quantity | Price |
|--------------------------|------------------------------------|----------|----------|
| <i>Infectious Agents</i> | | | |
| 40834 | Adenovirus..... | 2 µg | \$175.00 |
| 40835 | Cytomegalovirus..... | 2 µg | 175.00 |
| 40836 | Epstein-Barr Virus..... | 2 µg | 175.00 |
| 40837 | Hepatitis B Virus..... | 2 µg | 175.00 |
| 40838 | Herpes Simplex Virus | 2 µg | 175.00 |
| 40839 | <i>Chlamydia trachomatis</i> | 2 µg | 175.00 |
| 40842 | Hepatitis A Virus..... | 2 µg | 175.00 |
| 40843 | <i>Mycoplasma pneumoniae</i> | 2 µg | 175.00 |
| 40845 | SV40 | 2 µg | 175.00 |
| 40846 | <i>Campylobacter jejuni</i> | 2 µg | 175.00 |
| 40847 | JC Virus..... | 2 µg | 175.00 |
| 40848 | BK Virus..... | 2 µg | 175.00 |

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BioProbe® LABELED PROBES (continued)

| Cat. No. | Product | Quantity | Price |
|-------------------------------|---------------------------------------|-----------------|--------------|
| <i>Oncogenes</i> | | | |
| 40714 | c-Ha-ras..... | 2 µg | \$175.00 |
| 40717 | c-Myc..... | 2 µg | 175.00 |
| 40718 | N-Myc..... | 2 µg | 175.00 |
| <i>Hybridization Controls</i> | | | |
| 40840 | Lambda..... | 2 µg | 175.00 |
| 40849 | Blur 8 (human <i>alu</i> repeat)..... | 2 µg | 175.00 |

SECTION 5**SIGNAL GENERATING SYSTEMS**

| Cat. No. | Product | Quantity | Price |
|--|---|---|--------------|
| <i>Fluorescent Biotin Detection</i> | | | |
| 43818 | DETEK® 1-f (Double Antibody Fluorescence Detection)..... | for 200 slides | \$200.00 |
| 43821 | DETEK® FS (Fluorescent Streptavidin Detection)..... | for 100 slides | 110.00 |
| <i>DETEK® Colorimetric Signal Generating Systems</i> | | | |
| 43820 | DETEK® Hrp Kit (Hrp - AEC Detection)..... | 500 ml working solution or 40 membranes (100 cm ² each) | 150.00 |
| 43830 | DigDETEK® Hrp Kit (Hrp - AEC Detection)..... | 500 ml working solution or 40 membranes (100 cm ² each) | 150.00 |
| 43840 | FluorDETEK® Hrp Kit (Hrp - AEC Detection)..... | 500 ml working solution or 40 membranes (100 cm ² each) | 150.00 |
| 43822 | DETEK® Alk Kit (Alk Phos. NBT/BCIP Detection)..... | 500 ml working solution or 40 membranes (100 cm ² each) | 200.00 |
| 43832 | DigDETEK® AP Kit (Alk Phos. NBT/BCIP Detection)..... | 500 ml working solution or 40 membranes (100 cm ² each) | 200.00 |
| 43842 | FluorDETEK® AP Kit (Alk Phos. NBT/BCIP Detection)..... | 500 ml working solution or 40 membranes (100 cm ² each) | 200.00 |
| <i>Colorimetric Substrate Reagents</i> | | | |
| 43825 | AEC Peroxidase Substrate Kit..... | 300 ml working solution | 90.00 |
| 43826 | DAB Peroxidase Substrate Kit..... | 300 ml working solution | 90.00 |
| 43827 | NBT/ BCIP Alkaline Phosphatase Substrate Kit..... | 400 ml working solution | 125.00 |
| 43828 | INT / BCIP Alkaline Phosphatase Substrate Kit..... | 400 ml working solution | 125.00 |
| <i>Antibody-Based Biotin Detection</i> | | | |
| 43823 | DETEK® Enhancer Kit (Double Antibody Enhanced Detection)..... | 30 slides | 125.00 |
| 43861 | Rabbit anti-Biotin Antibody Concentrate..... | 400 ml working solution | 210.00 |

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| SECTION 6 |
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MICROPLATE HYBRIDIZATION ASSAYS

| Cat. No. | Product | Quantity | Price |
|----------------------------------|---|-----------------|--------------|
| <i>Microplate Assays</i> | | | |
| 46330 | HIV 1 Microplate Hybridization Assay..... | 96 test kit | \$625.00 |
| 46340 | MTB Microplate Hybridization Assay | 96 test kit | 625.00 |
| 46350 | HBV (core antigen sequences) Microplate Hybridization Assay | 96 test kit | 625.00 |
| 46360 | HIV 2 Microplate Hybridization Assay..... | 96 test kit | 625.00 |
| 46380 | HBV (surface antigen sequences) Microplate Hybridization Assay | 96 test kit | 625.00 |
| <i>Companion Products</i> | | | |
| 46331 | Oligonucleotide Pair SK38/SK39..... | 2 x 5 nmol | 175.00 |
| 46341 | Oligonucleotide Pair MTB10/MTB11..... | 2 x 5 nmol | 175.00 |
| 46351 | Oligonucleotide Pair HB01/HB02..... | 2 x 5 nmol | 175.00 |
| 46355 | Oligonucleotide Pair HB07/HB08..... | 2 x 5 nmol | 175.00 |
| 46361 | Oligonucleotide Pair VB306/VB310..... | 2 x 5 nmol | 175.00 |
| 46381 | Oligonucleotide Pair HB011/HB014..... | 2 x 5 nmol | 175.00 |
| 46382 | Oligonucleotide Pair HB012/HB013..... | 2 x 5 nmol | 175.00 |
| <i>Enhanced Microplate Assay</i> | | | |
| 46353 | Enhanced Microplate Hybridization Assay for Hepatitis B..... | 96 test kit | 700.00 |
| 46354 | Enhanced Microplate Hybridization Assay for Hepatitis B Serum Titration Standards..... | 4 runs | 50.00 |

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| SECTION 7 |
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MONOCLONAL ANTIBODIES FOR IMMUNOPATHOLOGY

| Product | Cat. No. | Price | Cat. No. | Price |
|---|--------------------------------|-----------------------|--------------------------------|-----------------------|
| | Ready-to-Use Format | for 6.0 ml | Concentrated Format | for 0.5 ml |
| anti-Cytokeratin, 35βH11, (low MW, 52.5 kd)..... | 30902 | \$110.00 | C34902 | \$140.00 |
| Keratin-903™ anti-Cytokeratin, 34βE12, (high MW, 68, 58, 56.5, 50 kd)..... | 30903 | 110.00 | C34903 | 140.00 |
| anti-Cytokeratin, 34βB4, (high MW, 68 kd)..... | 30904 | 110.00 | C34904 | 140.00 |
| anti-Melanoma, HMB45..... | 30930 | 110.00 | C34930 | 140.00 |
| anti-Muscle Actin, HHF35..... | 30931 | 110.00 | C34931 | 140.00 |
| anti-Neuroendocrine, PHE5..... | 30932 | 110.00 | C34932 | 140.00 |
| anti-Smooth Muscle Actin, CGA7..... | 30933 | 110.00 | C34933 | 140.00 |
| anti-GFAP, GF2..... | 30934 | 110.00 | C34934 | 140.00 |
| anti-Macrophage, HAM56..... | 30935 | 110.00 | C34935 | 140.00 |

OUTSIDE ATTORNEY'S EYES ONLY E 00029405

TO PLACE AN ORDER OR FOR TECHNICAL ASSISTANCE

Call: 800-221-7705 - Toll Free in the US and Canada
 516-694-7070 - All Others
 Between 8:30 AM - 5:30 PM Eastern Time

Fax: 516-694-7501

Required Information For Placing Orders:

purchase order number
 billing address
 shipping address
 customer account number (if known)
 catalog number and description of item
 size and quantity of each product desired

Research Use Only

All products sold by ENZO DIAGNOSTICS, INC. are for research purposes only and are not intended for diagnostic or therapeutic use. Purchase does not include any right or license to exploit the products commercially. Any commercial development without the express prior written authorization of ENZO DIAGNOSTICS, INC. is strictly prohibited.

Limited Warranty

These products are offered under a limited warranty. The products are guaranteed to meet all the appropriate specifications described on our data sheet at the time of shipment. ENZO DIAGNOSTICS' sole obligation is to replace the product to the extent of the purchase price. All claims must be made to ENZO DIAGNOSTICS, INC. within five (5) days of receipt of order.

Payment Terms

Net 30 days

Shipping and Handling Charges

In stock items: Orders received by noon will be processed and shipped the same day. All others will be processed next day.

Backorder items: Will be advised at time of ordering.

Ship via: Domestic: Federal Express Standard Overnight Service (or Federal Express Overnight Priority, if specified)
 International: Please Inquire

Shipping charges: F.O.B., Farmingdale, New York

Domestic Rates:

| | |
|-----------|-----------------------------|
| Ambient | \$ 25.00 |
| Cold Pack | \$ 35.00 |
| Dry Ice | \$ 45.00 |
| Priority | \$ 20.00 added to the above |

International Rates:

Air Freight charges plus the following:

| | |
|-----------------|----------|
| Small Box | \$ 25.00 |
| Medium Box | \$ 35.00 |
| Large Box | \$ 45.00 |
| Extra Large Box | \$ 55.00 |

Prices and Shipping Charges Subject to Change Without Notice

**Enzo Diagnostics, Inc.**

60 Executive Boulevard
 Farmingdale, NY 11735
 516 · 694 · 7070
 800 · 221 · 7705
 Fax 516 · 694 · 7501

OUTSIDE ATTORNEY'S EYES ONLY E 00029406



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Fax (212) 224-6125
mannj@gtlaw.com

October 10, 2013

BY E-MAIL

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Honorable Richard J. Sullivan
United States District Judge
United States District Court
Southern District of New York
500 Pearl St., Room 615
New York, NY 10007

Re: ***Roche Diagnostics GMBH et al. v. Enzo Biochem, Inc. et al.***
No. 04 CV 4046 (RJS);
Enzo Biochem, Inc. et al. v. PerkinElmer, Inc. et al.
No. 03 Civ. 3817 (RJS)

Dear Judge Sullivan:

Pursuant to the Court's Individual Practices § 2.A., Plaintiffs and Counterclaim Defendants Enzo Biochem, Inc. and Enzo Life Sciences, Inc. (collectively, "Enzo") hereby respond to the Roche and PerkinElmer parties' (collectively, "Movants") October 7, 2013 pre-motion letter ("Letter"). Movants' belated attempt to supplement the complete summary judgment record with additional extrinsic evidence, and, indeed, to reargue the PerkinElmer Motion, serves only to confirm the existence of triable issues of fact regarding the interpretation of the terms of the relevant contracts. This alone compels a denial of Movants' summary judgment motions on the non-patent issues.

Summary judgment is only proper where "there is *no* genuine dispute as to *any* material fact and the movant is entitled to judgment as a matter of law." *Olin Corp. v. Am. Home Assur. Co.*, 704 F.3d 89, 96 (2d Cir. 2012) (citing Fed. R. Civ. P. 56(a)) (emphases added). In opposition to Movants' multiple motions for summary judgment, Enzo submitted declarations of Dr. Elazar Rabbani, deposition testimony from Dr. Dean Englehardt, among others, and other extrinsic evidence as to the scope and meaning of the "research use only" and the separate "research market" restrictions, as well as other prohibitions on sales for commercial product development in the Movants' respective Agreements. (See, e.g., Elliott Decl. Ex. 1 ¶ 8; *id.* Ex. 11 at 41:14-16; *id.* Ex. 21 at 380:11-16; *id.* Exs. 24-30; Moore Decl. Ex. 2 ¶ 8; *id.* Ex. 5; Suppl. Rabbani Decl. ¶¶ 4-7.) As explained in Enzo's opposition briefs, this evidence, by itself, presents a genuine dispute of material fact and warrants denial of Movants' summary judgment motions.

Honorable Judge Richard J. Sullivan
 October 10, 2013
 Page 2

Months after having fought hard to keep the record closed and prevent Enzo from obtaining additional discovery to oppose the motions (*see, e.g.*, 1/25/13 Letter from R. Gunther to the Court),¹ and after the close of limited discovery on the motions permitted by the Court, Movants now seek to interject certain out-of-context snippets of deposition testimony from Mr. Barry Weiner recently elicited in the '830/'523 patent infringement proceedings which Movants contend support their competing interpretation of the "research use only" restrictions. If anything, the Movants' attempt to rely on this additional extrinsic evidence supports denial of their motions, for at least the following reasons:

First, Movants' reliance on extrinsic evidence to determine the meaning of the "research use only" restrictions amounts to nothing short of an admission that the contractual language is ambiguous, in contrast to their original argument that, "These [the contract claims] can be resolved as a matter of law based on the unambiguous language of the contract." (See PE Opening brief at 1; emphasis added (but *Cf.* PE Opening Brief at 11, fn. 10, "Although the Distributorship Agreement is on its face ambiguous....") This only underscores that "[s]ummary judgment as to the meaning of a contract term may not be granted when the term's meaning is not clear or is reasonably susceptible to more than one interpretation. Where contract language is ambiguous, the differing interpretations of the contract present a triable issue of fact." *Record Club of Am., Inc. v. United Artists Records, Inc.*, 890 F.3d 1264, 1270-71 (2d Cir. 1989).

Second, even were the Court to consider this additional extrinsic evidence, it should be weighed – by a jury, not the Court – against the Movants' prior admissions and the extrinsic evidence which Enzo has submitted because, "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge." *Redd v. N.Y. Div. of Parole*, 678 F.3d 166, 174 (2d Cir. 2012) (quoting *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000)); *see also Olin Corp.*, 704 F.3d at 96 (on summary judgment, the Court must "draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence").

Third, Mr. Weiner's testimony about *Enzo's* alleged application of a "research use only" (not "research market") restriction it used in its *own* catalogs says nothing about *Movants'* sales to commercial entities for, *inter alia*, diagnostic drug development, which were prohibited by their respective agreements. Each of those agreements contains restrictions which are in addition to those in Enzo's catalog. Moreover, Enzo, unlike its distributors who are bound by contractual restrictions, may distribute its own products to whomever it chooses and for whatever purpose it chooses to allow.

¹ When Movants sought to move for summary judgment in October 2006, counsel for Roche, speaking "on behalf of all defendants," represented to Judge Sprizzo that "[w]e are prepared now to bring on motions for summary judgment.... I don't need any discovery to move for summary judgment from [Enzo]." (Oct. 26, 2006 Hr'g Tr. at 12-22-13:7). At the time, Movants had already deposed Mr. Weiner, along with Dr. Rabbani, Dr. Englehardt, and other Enzo (and third party) witnesses for multiple days, and had every opportunity to elicit testimony regarding the negotiation and interpretation of the Distribution Agreements and the "research use" restrictions therein. Enzo respectfully submits that the Court should hold Movants to the same standard it held Enzo when it ordered its latest discovery cutoff on the contract issues (*see, e.g.*, D.I. 87, Case No. 03 Civ 3819), and refuse to consider Mr. Weiner's testimony for purposes of Movants' motions.

Honorable Judge Richard J. Sullivan
 October 10, 2013
 Page 3

The Movants' proffered extrinsic evidence concerning interpretation of a 1996 Enzo catalog (which they have had in their possession for years) regarding "research use only" language says nothing about what the parties intended to be reflected in (1) Roche's 1994 Agreement, especially regarding the meaning of "research market" and other terms, or (2) PerkinElmer's Agreement, particularly regarding sales for commercial development or other commercial exploitation. Likewise, the extrinsic evidence has no bearing on Movants' other contractual obligations to exercise best efforts to prevent commercial development and exploitation, nor to the reasonable inferences that may be drawn from a failure to do so—for instance, the inference that those products were in fact commercially exploited. (See PE Opening Brief at 8, "research related to product development [is] *the only type of research in which commercial entities engage*").

Fourth, Movants' statement that Mr. Weiner was offered as a 30(b)(6) witness on Topic No. 10 in Roche's notice is misleading. Enzo objected to Roche's 30(b)(6) notice, including *inter alia*, to the extent it sought to back-door non-patent/contract related discovery, and specifically to this topic, on the grounds that it was not relevant to any claim or defense concerning the '523 or '830 patents in this action. Roche's notice also failed to describe with reasonable particularity the matters sought for examination as required by Fed. R. Civ. P. 30(b)(6). (See Enzo's Responses and Objections to Roche's 30(b)(6) Deposition to Enzo, dated September 16, 2013, at 16-17.)² Enzo further specifically objected to Roche's line of questioning as outside the scope of the 30(b)(6) notice and irrelevant to the issues on which discovery was permitted by this Court. (See Letter, Ex. A, generally.) Regardless, Rule 30(b)(6) testimony does not operate as a judicial admission, and thus cannot "trump" the extrinsic evidence described herein. See, e.g., *A & E Prods. Group, L.P. v. Mainetti USA, Inc.*, 2004 WL 345841, at *7 (S.D.N.Y. Feb. 25, 2004).

Fifth, Mr. Weiner made clear in other parts of his deposition, which Movants do not cite, that he was not involved with order taking and marketing of Enzo's Life Science products, so he could not speak from personal knowledge about the purchasers of Enzo's products or the uses to which those products were put or were permitted to be put. (See Letter, Ex. A, at 38:12-15, 40:8-14.) Thus, Mr. Weiner's testimony would be inadmissible on these issues. Fed. R. Evid. 602.

For the foregoing reasons, Enzo respectfully requests that the Court deny Movants' request to supplement their summary judgment briefing or to "deem the summary judgment record supplemented" by way of its Letter.³

² Roche's questioning of Mr. Weiner far exceeded the scope of discovery permitted by the Court at this phase of the case, which was limited only to issues involving the '523 and '830 patents, Roche's Elecsys and Taqman products, and the causes of action with respect to those products as alleged in Enzo's counterclaims against Roche only. (D.I. 99, Case No. 04 Civ. 4046; see also Roche's Reply Brief, at 1 n.1.)

³ To the extent the Court is inclined to grant the Movants' request to supplement the record, Enzo requests that it be permitted to submit additional countervailing evidence including from Mr. Weiner's deposition as well as certain documents that were produced by Roche in the midst of the recent depositions in Germany which evidence reveals Roche's bad faith attempts to conceal, mislead and induce Enzo into believing that there was no breach of the Agreement.

Honorable Judge Richard J. Sullivan
October 10, 2013
Page 4

Respectfully,

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cc: All Counsel of Record